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13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

16 TETSUYA JOE NOMURA,  
17 Plaintiff,  
18 vs.  
19 AMAZON.COM, INC.,  
20 Defendant.

Case No. CV 11-01210 HRL

**DEFENDANT AMAZON.COM, INC.'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS NOMURA'S FIRST AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT FOR FAILURE TO  
PROSECUTE PURSUANT TO F.R.C.P.  
§ 41(b)**

**Date: September 10, 2013  
Time: 1:30 p.m.  
Ctrm: 2**

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24 **AND RELATED COUNTERCLAIMS**  
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Defendant Amazon.com, Inc. (“Amazon”) respectfully submits this reply brief in support of its motion for involuntary dismissal with prejudice (the “Motion”) (Dkt. 124) of the patent infringement action Plaintiff Joe Nomura Tetsuya (“Plaintiff”) filed on March 11, 2011 pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

## **I. INTRODUCTION**

Defendant Amazon filed a Motion to Dismiss for Failure to Prosecute on August 6, 2013 (Dkt. 124). Pursuant to Local Rule 7-3(a), Plaintiff’s opposition to the motion was due on August 20, 2013. As of the date of filing this reply, Plaintiff has failed to file a response to Amazon’s motion. Consequently, this Court should dismiss Plaintiff’s claims, with prejudice, under Rule 41(b).

## **II. ARGUMENT**

### **A. Plaintiff’s Failure To Oppose Amazon’s Motion Constitutes Grounds for Dismissal.**

In accordance with Civil Local Rule 7-3(a), Plaintiff was required to file an opposition to Amazon’s Motion by August 20, 2013. To date, Plaintiff has failed to oppose Amazon’s Motion as required by the local rules.

“The failure to file an opposition to a motion to dismiss in a manner consistent with the court’s rules is grounds for granting the motion.” *Wiley v. Macy’s*, 2010 WL 2636029 \*1, fn. 1 (N.D. Cal. June 30, 2010); *Estrada v. Rowe*, No. C 08-2801-MMC (PR), 2010 WL 957120, at \*4 (N.D. Cal. Mar. 12, 2010); *Mullen v. Surtshin*, No. C 03-3676-RMW (PR), 2009 WL 734673, at \*4 (N.D. Cal. Mar. 18, 2009); *Ciria v. Rubino*, No. C 07-4770-MJJ (PR), 2007 WL 3035379, at \*3 (N.D. Cal. Oct. 12, 2007); *Vasquez v. Flores*, No. C 06-02984-JW (PR), 2007 WL 2385120 (N.D. Cal. Aug. 17, 2007); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9<sup>th</sup> Cir. 1995) (holding that a *pro se* litigant’s failure to follow a court’s local rules and file a timely opposition to a motion to dismiss is proper grounds for dismissal). Here, Plaintiff’s failure to comply with local rules and timely oppose Amazon’s Motion is itself sufficient grounds for the dismissal of Plaintiff’s Complaint.<sup>1</sup> Plaintiff had ample time to file his opposition or to ask the Court for an extension of time to respond but he did

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<sup>1</sup> Although pleading standards may be construed more liberally in their favor, *pro se* litigants are equally bound by the rules of procedure. *Ghazali v. Moran*, 46 F.3d at 54.

neither. He failed to take any action during the required time period and, to date, has done nothing to rectify this deficiency.

**B. Dismissal with Prejudice Is Appropriate Under Rule 41(b).**

Dismissal with prejudice is appropriate under Rule 41(b) when a party fails to prosecute its case within a timely manner proscribed by the Federal Rules of Civil Procedure or by Court order. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir.2002) (affirming dismissal with prejudice under Rule 41(b) for unexplained delays and belated filing of opposition papers); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir.1995) (per curiam) (affirming dismissal under former version of Nevada Local Rule 7-2(d) where plaintiff failed to file an opposition to a motion to dismiss and Rule 41(b) factors weighed in favor of dismissal); *see also Yourish v. California Amplifier*, 191 F.3d 983, 986 (9th Cir. 1999) (affirming a district court's dismissal of plaintiff's case with prejudice pursuant to Rule 41(b) when plaintiff failed to file an amended complaint in response to the court's minute order).

**III. CONCLUSION**

Plaintiff's failure to respond to Amazon's Motion and continuing failure to prosecute his case provides sufficient grounds for the Court to grant Amazon's Motion and dismiss Plaintiff's action with prejudice under Rule 41(b) of the Federal Rules of Civil Procedure.

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Dated: August 23, 2013

By: /s/ Bryan J. Sinclair

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